

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	DOCKET NO. 99-284-1
	:	
v.	:	
	:	
EDGAR STROUD	:	

GOVERNMENT’S MOTION AND MEMORANDUM FOR
HEARING AND DEFENDANT’S PRETRIAL DETENTION

The United States of America, by Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania, and Richard A. Lloret, Assistant United States Attorney, moves for a detention hearing¹ and pretrial detention of the defendant, EDGAR STROUD, pursuant to 18 U.S.C. §3142(e). The government seeks this Order because no condition or combination of conditions will reasonably assure the defendant’s appearance as required or the safety of the community.²

¹ Under 18 U.S.C. §3142(f)(1)(C), a judicial officer shall hold a detention hearing upon motion of the government in a case, as here, which involves any felony, if the defendant has previously been convicted of two or more state drug distribution charges that would have carried a maximum of 10 years or more imprisonment if they had been charged federally. 18 U.S.C. § 3142(f)(1)(D). STROUD has been convicted of one such offense.

² The government must prove by a preponderance of the evidence that no conditions of release reasonably will assure the defendant’s appearance or prove by clear and convincing evidence that no conditions of release will assure the safety of the community. United States v. Himmler, 797 F.2d 156, 161 (3d Cir. 1986).

I. STATEMENT OF FACTS

A. Probable Cause And The Evidence In This Case

In support of this motion, the government makes the following representations and proposed findings of fact:

1. There is probable cause to believe that on January 12, 1999 EDGAR STROUD committed the offenses of knowingly possessing a firearm in or affecting interstate commerce after having been convicted of a crime punishable by more than one year's imprisonment, and distributing crack cocaine.

2. The evidence in this case is strong and consists of eyewitness testimony of three police officers, as well as other evidence.

3. The evidence shows that the defendant possessed a loaded semi-automatic pistol while on probation for a 1995 drug distribution felony. Police officers observed STROUD distributing crack cocaine, on January 12, 1999. When they told him to halt, STROUD fled into 911 Woodlawn Street and locked the door. Police found a loaded weapon in the room from which he was observed emerging at the time of his arrest. The room was identified as his room by an inhabitant of the house. At the time of his arrest, STROUD was on probation in the state system stemming from a previous conviction for distribution of cocaine.

4. On April 1, 1999 the defendant was placed on a \$50,000 bond in this case. One of the conditions of his pre-trial release was to remain at his residence and not to leave without the prior approval of his Pretrial services officer.

5. As set forth in the report of the Pretrial Services Officer, a copy of which is attached to this Motion and is incorporated by reference, the defendant has had difficulties maintaining a

residence. On April 29, 1999, at the request of his girlfriend, Tiffany Wah, with whom he resided at 442 Parlin Street, Philadelphia, PA, Stroud was permitted to move from his residence at 442 Parlin Street, to his sister's house at 53 Adams Street in Pine Hill, NJ. On May 11, 1999 he requested that he be permitted to return to 442 Parlin Street, with the acquiescence of his girlfriend, Tiffany Wah.

6. On June 7, 1999 the defendant reported he was unable to continue residing at 442 Parlin Street due to continuing difficulties with his girlfriend. He requested permission to reside with another girlfriend, Tanya Baumbach, at 3468 Tampa Street, Philadelphia, PA. Ms. Baumbach reluctantly agreed to permit defendant to reside with her on a short term basis.

7. Defendant was permitted to leave his residence to go to work at 3 p.m. on June 7, 1999. He was to return to his residence after his departure from work at 12 midnight. He did not return home until 5:49 a.m. on June 8, 1999. He told Pretrial Services that he had not worked at all the previous night and had been out with friends.

8. The nature and strength of the evidence against the defendant, his inability to maintain a residence, and his non-compliance with the conditions of his pretrial release, demonstrate both that the defendant is a high risk not to appear and that he poses a danger to the community.

B. Penalties

1. Defendant, STROUD, is charged with a violation of 18 U.S.C. § 922(g)(1). He faces a statutory maximum of 10 years imprisonment, a \$250,000 fine, 3 years of supervised release and a \$100 special assessment.

2. Based on STROUD's prior record, the fact that he used or possessed the firearm

in question in connection with a crack cocaine offense, and the fact that the defendant was on probation when the offense occurred, the defendant faces a guidelines incarceration range of 57-71 months. USSG 2K2.1(b)(5). If USSG 3C1.2 is applied to his conduct for reckless endangerment during flight to avoid arrest, his guidelines range of imprisonment would increase to 70-87 months. Accordingly, there is a significant incentive for the defendant to flee to avoid prosecution and incarceration.

C. Prior Criminal Record/Attendance At Court Proceedings

The defendant has a prior conviction for delivery/manufacture/possession with intent to deliver crack cocaine in 1995 in the Philadelphia Court of Common Pleas, at CP #9504-0047, sentence date 10/22/97. He was on probation at the time of his arrest. At the time of his federal arrest of March 29, 1999, STROUD tested positive for marijuana. There is no indication that the defendant has failed to appear as required in the Court of Common Pleas.

D. Ties To The Community

1. The defendant reported that he is employed as a dishwasher, making \$7/hr.

While STROUD appears to have some family or social ties to the community, these ties, such as they are, exert no compelling influence on him. The legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, *Comprehensive Crime Control Act of 1983*, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

2. Certainly, any ties to the community in this instance have not served to prevent the defendant from endangering the community by possessing a loaded firearm while on

probation, and from dealing crack cocaine. Where a defendant has previously violated the terms of his probation in so obvious and dangerous a fashion, the Court should be very reluctant to let the defendant loose on the community again. The risk to the community is apparent, and defendant's ties to the community are irrelevant to this prong of the analysis under 18 U.S.C. §3142.

E. Rebuttable Presumption

There is no rebuttable presumption in favor of detention in this case.

II. ARGUMENT

There is probable cause to believe the defendant was in possession of a loaded semi-automatic pistol while on probation, having been previously convicted of at least 1 felony drug distribution charge. At the time of his arrest, STROUD had just been observed selling crack cocaine. The case against the defendant is strong. Whatever the defendant's ties to the community, they have not served to prevent him from breaking the law. Defendant has been unable to comply with the terms of his pretrial release, and is apparently unable to maintain a stable residence while on pretrial release.

The safety of the community is clearly jeopardized by those who possess loaded semi-automatic weapons, not only in violation of the law but specifically in violation of the terms of their probation. The facts of this case strongly demonstrate that the defendant was willing to conduct himself in obvious violation of a specific court order, i.e., the terms of his probation. He has confirmed this proclivity by violating the terms of his pretrial release in this case. There is a high risk that he will continue to conduct himself in this fashion despite the existence of a court order commanding him to do otherwise.

The defendant faces a significant term of incarceration in a federal penitentiary, with a correspondingly high incentive to flee, if placed on bond or home detention with electronic monitoring.

Only 24 hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute, 18 U.S.C. §3142(c), are unlikely to ensure that the defendant will not flee, resume his criminal activity or violate the terms of release imposed upon him by the court. The defendant should be detained without bond through the course of this case, which is currently scheduled for trial on July 1, 1999.

II. CONCLUSION

For the reasons stated above, the United States respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

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United States Attorney

J. HUNTLEY PALMER
Assistant United States Attorney
Chief, Guns & Arson

RICHARD A. LLORET
Assistant United States Attorney

Date: June 16, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing
to be served by fax and regular mail upon the following:

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Richard A. Lloret
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Dated: August 11, 2003